

MAN WHO WAS KILLED NOWHERE

THOMAS J. VIVIAN and GRENA J. BENNETT.

P. M. DELMAR
never lost a
case.

AUTHORS OF 'THE DREAM BOTTLE'
'THE SINGING POPPIES'
'PICKING UP THE THREAD.'

It is as much an
integral part of
the land as is the nail
which grows on the finger.

AS Ah Lee leaped Ramon fired.

The Portuguese
slashed the
Chinaman
across
the neck.

H. N. A. P.

He Was Really Killed, Shot Through the Heart, But as at the Time He Was Leaping Through the Air, the Court Declared Queer Case Outside His Jurisdiction and Discharged Slayer.

Here is the remarkable story of the man who was killed nowhere. He was really killed—shot through the heart by a pursuing enemy—and yet it was proved before a judge and jury that he was killed nowhere. That sounds foolish, but—well, it happened this way:

RAMON GUTIEREZ owned, or at any rate said he owned, the little Island of Mercedes, one of the lovely group that shuts off the Santa Barbara channel from the sweep of the Pacific. This was long before the dealer in tourists had discovered the slumberous beauties of Santa Catalina, with its dreamy Bay of Avalon and its pursuit of the anything but sleepy tuna.

Ramon had discovered that hiding under a brown cloak of sun-burned grass there lay an inner lining of succulent herbage, admirably fitted for sheep. He had found, too, that the sheep wandering up and down the wind-swept hills while they nosed for this green food grew a thick, long wool that was much appreciated on the mainland. So the sheep of Ramon Gutierrez grew fat and grew long wool on the Island of Mercedes while the bank roll of Ramon grew fat in the vaults of the National Bank of Los Angeles. Which is more than Ramon did, for he ever remained a lean Spanish American, hot of blood and hotter of passion, short of stature and shorter of temper.

Ramon kept a gang of Portuguese herders to tend the sheep, and a China-

man to cook for the herders. The chief of the herders was one Luiz—and the Chinese cook said his name was Ah Lee, but he answered equally well to Sam.

Between Luiz and Ah Lee there had been blood for months, due primarily to the Portuguese herder having discovered the Chinese cook putting gull flesh into tomatos, while the chicken which had been intended for the dish formed part of the Chinaman's department of the interior. Luiz had yanked Ah Lee around the caboose by his queue and Ah Lee had seized the meat chopper when Ramon appeared and prevented—no, averted the tragedy.

One hot, still afternoon in July Luiz complained to Ramon that the Chinaman had fouled the drinking well. Ramon turned roughly on the cook, for he thought much of Luiz and little of Ah Lee, and the Chinaman answered saucily.

"You dog," cried Ramon, "do you dare to speak like that to me?" and lifted his cane to strike.

The Chinaman fought back.

The sun must have got into Ah Lee's head, for without a word of warning he whipped out a revolver and fired at his master. Quick as the Chinaman had been Luiz was quicker, for as the Chinaman drew his revolver Luiz drew his knife, and as Ah Lee fired the Portuguese slashed the Chinaman across the neck. The knife missed the jugular, for which it had been aimed, and Ah Lee, wheeling like lightning, shot Luiz through the stomach.

Then the Chinaman dropped the re-

volver, and with a howl fled down the trail that led to the wharf. At first Ramon could not understand; he did not know why Ah Lee had not plugged him with a bullet, but when he turned his eyes in the direction of the fleeing cook he knew the reason for Ah Lee's scamp.

A wharf, 400 feet long, had been built out from the island in order to get deep water for the accommodation of a small coasting steamer that called for the traffic of the islands. Twenty lumping bales of wool from Ramon's sheep had been put on board the steamer, which was then preparing to draw away from the wharf-head.

Ramon saw that Ah Lee had seen the impossibility of living an hour after the herders' knowledge that their padrone had been slain, and so had made for the only possible avenue of escape, the steamer.

"By the Sacrament," cried Ramon, "he shall not escape." And picking up Ah Lee's pistol he went galloping down the trail after the Chinaman. Wiry Ramon was a good runner and the Chinaman was not, but when Ah Lee heard the flying steps of his pursuer and then a chorus of yells from the herders, who were flocking in from the hills to see what the shooting meant, he pelted down the wharf like a frightened hare.

When Ah Lee reached the string-piece the steamer had thrown off her line and was slowly getting under headway. It was an impossible jump, but Ramon and the terror of death were behind him, and with another howl Ah Lee leaped.

Plugged Him on the Wing.

As Ah Lee leaped Ramon fired, and it was found afterward that by one of those accidents of marksmanship the bullet had gone clean through the Chinaman's heart. Ah Lee was in mid-air when he was shot and he fell straight as a stone into the sea between the wharf and the steamer.

Now it happened that the sheriff of Los Angeles county was on board the steamer. His name was Vissler—Hank Vissler—and as his term of office ran only two weeks longer he saw in the present episode a most fortuitous aid to re-election. So in the full exercise of the majesty of the law he had the captain back up the steamer to the wharf, jumped ashore and arrested Ramon Gutierrez.

The ranchero was taken up to the mainland and a charge of murder preferred against him. He was held in \$10,000 bail and his case came up in the October term of the criminal court of Los Angeles county. P. M. Delmar, who was proud of knowing the bass of Mozart's "Twelfth Mass" than he was of never having lost a case, appeared for Gutierrez. The sheriff and the captain of the steamer—her name, by the way, was the Alcatraz—swore to the facts of the homicide and Delmar never asked them a question or objected to a single statement of fact.

When the prosecuting attorney, an immature lawyer, but a splendid fellow, turned to Delmar, and said: "That is our case," Delmar smiled, and said: "Oh, is it? Well, I must say I don't see where your case lies."

Then, with that pitying smile which always meant so much mischief to the

other side, he addressed the court in this remarkable fashion:

Court Without Jurisdiction.

"Really, your honor, I feel that I should apologize to you for my share in taking up your valuable time over a useless question. The prosecution has shown that the Chinaman Ah Lee was shot and received a death wound by a bullet that pierced his heart while he was in mid-air. While he was in mid-air, that is, he was shot in flight like a bird on the wing. He was killed in the air, not in Los Angeles county, for surely the county of Los Angeles does not pretend for one minute to have jurisdiction over the circumambient atmosphere—that life-giving ether with which God in His Infinite mercy has surrounded His beings.

"I move, your honor, that the case is without your jurisdiction."

The judge looked absolutely startled at the audacity of the proposition.

"It is a point without precedent that you have raised, Mr. Delmar," he said. "I would suggest," he continued, nervously, "that a juryman be withdrawn so as to annul the present sitting."

Couldn't Hold the Slayer.

And despite the frantic objections of the prosecuting attorney, the judge forthwith discharged the prisoner.

The prosecuting attorney was white with rage, and shaking his finger at Delmar said:

"You think you have quashed this. Not by a jugful. You've dug your own grave, Mr. Delmar. If this case is outside the jurisdiction of Los Angeles county, it's inside the Federal jurisdiction, and if I don't get a true bill before the district court, my name ain't Leandro Hutchins."

"My dear Hutchins," said Delmar, "I quite agree with you, and especially so as Judge Griffin is a master in constitutional law—and a particular friend of mine."

In pursuance of this threat Hutchins brought the matter before the Federal grand jury, secured an indictment and the arrest of Gutierrez by a Federal marshal. Hutchins was so hopping mad at the absurd manner in which he had been bowled over by a gust of windy sophistry that he split the creed of the law's delays into a thousand fragments, and rushed his case through with a velocity that could not have been surpassed had his father been the victim of Ramon's pistol instead of a Canton coolie.

Delmar kept on smiling like Ah Lee's own God of Abundance, and repeated those tactics in the United States District Court which he had practiced before the criminal judge. He allowed the presentation of the case, made no attempt to cross-examine the witnesses for the prosecution, and introduced none of his own. But what he said was this:

Dismissed by Federal Court.

"If your honor will permit me, this is a simple case of non-adjudication. The crime, if any crime occurred, took place on the wharf running out from the island of Mercedes, which, by the act of the Legislature of 1886-87, was made part of the county of Los Angeles.

"Now, a wharf properly anchored to and continuing from an island or a mainland is but an appendage of that island or mainland. It is as much an integral part of the land as is the nail which grows on the finger, which I have the honor of pointing at you in a most respectful emphasis.

"Such being the case, and surely it needs no further argument before your honorable self, the alleged crime took place in the county of Los Angeles, and is therefore an ordinary criminal case, to be tried by the legal authorities of that county. I petition for a nolle."

There was a funny twist at the corner of Justice Griffin's mouth, as he leaned over the desk and entered the phrase, "Dismissed—no jurisdiction."

How Gained They the Heights

W HEN you were a boy at school you knew a boy who was regarded as rather slow-witted, stupid, and dull. He was not quick in repartee, not gifted in memory, and stood away down at the foot of his classes. You did not expect much of him, and his teachers expected still less. But as the years have come and gone, slowly, but none the less surely, that boy has forged to the front, and now he is standing in lofty eminences, commanding the respect of all with whom he comes in contact. His word is law for a multiplicity of employes under him; and to him, in times of trouble, many people turn.

As you study him you wonder at his success, and you say: "How gained he the heights?" He has made such remarkable progress, overcoming so many obstacles, and has achieved so much that you stand looking at him with wonder and amazement.

How do great men gain the heights? Go back, down the long, dim, dusty gray years of the centuries for an illustration of how one man in the early days gained the heights, knowing that his story is the story of all who reach the delectable mountains of success.

This man, whom history holds in loving remembrance, was known as Anselm. As a boy, living in the twelfth century, he was dreamy, moody, and had no thought for the things of this life. He dreamed strange dreams of heaven and sought to make his life heavenly. In the mountain valley monastery where he was studying he was regarded as idle, slow-witted and not bright. He did not care particularly for the sports of boys. He was not particularly popular with his comrades. Slow and laborious was his progress. But it was progress.

As the years unfolded his goodness of heart and amiability attracted the attention of his superiors; and they, breaking the barrier of conservatism that surrounded his soul, found therein a rare spirit. They sought to develop that soul, and presently his entire spirit became aflame with a desire to do good, and what was better still, to be good.

He became one of the greatest think-

Ah Lee received his death wound by a bullet that pierced his heart while he was in mid-air. He was killed in the air, not in Los Angeles county, for surely the county of Los Angeles does not pretend for one minute to have jurisdiction over the circumambient atmosphere! I move, your honor, that the case is without your jurisdiction.

—Argument That Saved Chinaman's Slayer.

on the brief, which he then handed to the clerk of the court.

But Gutierrez could not be tried by the criminal court, having been once in

peril and there being no new evidence. So he went free, the killing of Ah Lee passed unpunished, and he is still recorded in Los Angeles county as the man who was killed nowhere.

IT'S EASY TO GET FAT OR THIN, AS YOU PREFER

ers of his age. His books of philosophy are the terror of young students and the amazement of philosophers.

He became illustrious as Archbishop of Canterbury, England; the one man in all the realm who was not afraid to rebuke William II as he sat on his throne. Says one great historian: "The boldness of Anselm's attitude not only broke the tradition of ecclesiastical servitude but infused through the nation at large a new spirit of independence."

Anselm had indeed gained the heights! How gained he them?

In this way: His passion for study after his mind had been opened to "see things" led him to spend whole days and whole nights in study and writing. Oftentimes he slept with wax tapers by his side and tumbled on his pillow, so that he might put into permanent form the thoughts that

came surging into his brain. Even a fever could not quench his insatiable will. He loved the monks under him with such fidelity that "they shall not drink save the wine that Anselm's hand squeezed for them from the bunch of grapes."

He succeeded as all men who have succeeded have done, through patience, pains and persistent work and ability to initiate new plans and methods. He knew no fear, carried no malice and lived a clean life.

Would you gain the heights? There is no other way than this:—

No easy path, no royal road! Evermore is it the same.

"The heights by great men reached and kept
Were not attained by sudden flight,
For they, while their companions slept,
Were toiling upward in the night."

IT'S EASY TO GET FAT OR THIN, AS YOU PREFER

T HERE are too many fat people and too many thin people in the country, and the government, through the Agricultural Department, is conducting experiments to show them how to strike an average.

C. F. Langworthy, chief of the division of nutrition investigation, is conducting investigations which include dietary studies, digestive experiments and various other things in connection with food.

"How to get thin and how to get fat" are being experimented with in a course of dietary studies at the University of Maine, at Orono, in that State, under the supervision of Professor C. D. Woods, and at the University of Tennessee, at Knoxville, by Professor E. C. Waite.

These experiments were in full swing before Secretary Taft entered the cabinet, and therefore it cannot be charged even in a presidential campaign that he used his influence to get the Government to work on the scheme.

To fat ones the Government says: "Eat little, sleep little and drink less."

To the thin man it says: "Drink all you can, eat all you can and sleep as much as you can."

The thin man who wants to get fat must eat and drink everything that he can stomach. He must eat plenty of potatoes, bananas and bread; most important, he must drink water before and after his meals.

The experts say it is principally what a person drinks and not what he eats that makes him fat. Fat is mostly water, it is asserted, and the more water or other liquids a person stores away the more likely he is to gain weight. Sweats of all kinds also are urged as fat producers.

Above all, a thin person who wants to spread out must sleep ten or eleven hours a day. A nap after each meal is offered as an excellent inducement for fat to come and stay.

On the other hand, the man who is trying to lose weight is advised to keep moving after a meal to thwart the dream adipose.

"In the summer," said the Agricultural Department official, "persons who are inconvenienced by fat may reduce the weight, for it causes perspiration and that means a discharge of a good deal of the water under the skin. But the principal inducement of summer is that the season offers many fresh vegetables, like tomatoes, onions, lettuce, radishes and the like, which the fat man may eat by the wholesale with impunity."